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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/911,733
Filing Date: July 25, 2001
Appellant(s): KLING ET AL.

Joe McKinney Muncy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/18/06 appealing from the Office action
mailed 7/13/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6516324	Jones et al.	2-2003
6384728	Kawarizadeh et al.	5-1999

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6029139	Cunningham et al.	2-2000
5701400	Amado	12-1997
5974396	Anderson et al.	10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 13-14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al., US Patent 6516324, hereinafter Jones, and further in view of Kavarizadeh et al., US Patent 6384728, hereinafter Kavarizadeh.

As in Claim 1, Jones teaches a data-displaying interface with a page including fields for selecting a desired institution (Figure 3, ref. 44) and a desired period (Figure 3, ref. 52, 54, 56) along with a button (Figure 3, Ref. 66) for displaying one of a plurality of reports (Figure 3, Ref. 60) containing information that corresponds with the selected institution and time period (Col. 7, line 40 et seq.). While Jones teaches generating an interface for selecting an institution and period and generating reports via a button

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corresponding to the selected information, they fail to teach generating the information relating to usage of specific incontinence products as recited in the claim. In the same field of the invention, Kwarizadeh teaches a product monitoring system similar to that of Jones. In addition, Kwarizadeh further teaches the monitoring of incontinence products (Column 4, lines 4 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kwarizadeh before him at the time the invention was made, to modify the interface for selecting an institution and period and generating reports via a button corresponding to the selected information taught by Jones to include the incontinence product data of Kwarizadeh, in order to obtain a reporting system for incontinence product usage. One would have been motivated to make such a combination because a way to remotely monitor usage of incontinence products would have been obtained, as taught by Kwarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

As in Claim 2, Jones teaches the page has the means for selecting one or more periods for display on one of the reports (Figure 3, ref. 52, 54, 56).

As in Claim 4, Jones teaches a subsequent page from button activation, with content being chosen from the last displayed report of the plurality of reports (actuate button 66).

As in Claim 5, Jones teaches a summary report including information pertaining to products used (scanner used) in the selected institution and time period (Facility 44, Period 52).

As in Claim 13, Jones teaches a method comprising providing a GUI accessible through user login (Fig 1, ref. 14 and corresponding text), generating and displaying a report based on user selected institutional information (Figure 3, ref. 44), and user selected periods of time (Figure 3, ref. 52, 54, 56) for specific information relating to products used in the institution selected during the periods of time selected (See also Claim 1 rejection *supra*). While Jones teaches the method and GUI for selecting an institution and time period, and generating corresponding reports, they fail to show the data relating to incontinence products as recited in Claim 13. In the same field of the invention, Kwarizadeh teaches a product monitoring system similar to that of Jones. In addition, Kwarizadeh further teaches the monitoring of incontinence products (Column 4, lines 4 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kwarizadeh before him at the time the invention was made, to modify the GUI and method of querying product usage databases taught by Jones to include the incontinence product data of Kwarizadeh, in order to obtain a reporting system for incontinence product usage. One would have been motivated to make such a combination because a way to remotely monitor usage of incontinence products would have been obtained, as taught by Kwarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

As in Claim 14, Jones teaches the institution selected through the GUI to be a hospital (Fig. 3, ref. 44 and corresponding text).

As in Claim 22, While Jones teaches such a system for displaying product usage data, they fail to show the specific information relating to incontinence products is

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utilized to regulate incontinence care for patients in an institution as recited in the claims. In the same field of the invention, Kavarizadeh teaches a product monitoring system similar to that of Jones. In addition, Kavarizadeh further teaches the monitoring of incontinence products (Column 4, lines 4 et seq.) utilized to regulate incontinence care for patients in an institution (Column 4, line 5 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kavarizadeh before him at the time the invention was made, to modify the product usage reporting system taught by Jones to include the specific incontinence products data used to regulate incontinence care for patients in an institution of Kavarizadeh in order to obtain incontinence product usage reports used to regulate incontinence care. One would have been motivated to make such a combination because a way to remotely monitor usage of incontinence products for multiple patients would have been obtained, as taught by Kavarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

Claims 3, 8-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones, US Patent 6516324, and Kavarizadeh, US Patent 6384728 and further in view of Cunningham et al., US Patent 6029139.

Jones teaches a method comprising generating a GUI with user selectable fields for specific institutions (Figure 3, ref. 44), a field for time periods (Figure 3, ref. 52, 54, 56), a field for number of time periods (Figure 3, ref. 52), and a button (Fig. 3 ref. 66), which when activated, generates a report (Figure 3, Ref. 66) chosen from a plurality, that contains information relating to the selected institution and specific time period

(Column 7, lines 40 et seq.). While Jones teaches generating an interface with fields for an institution, time period and number of time periods and generating reports via a button corresponding to the selected information, they fail to teach generating the information relating to usage of specific incontinence products as recited in the claim. In the same field of the invention, Kwarizadeh teaches a product monitoring system similar to that of Jones. In addition, Kwarizadeh further teaches the monitoring of incontinence products (Column 4, lines 4 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kwarizadeh before him at the time the invention was made, to modify the interface with fields for an institution, time period, number of time periods and generating reports via a button corresponding to the selected information taught by Jones to include the incontinence product data of Kwarizadeh, in order to obtain a reporting system for incontinence product usage. One would have been motivated to make such a combination because a way to remotely monitor usage of incontinence products would have been obtained, as taught by Kwarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

As in Claims 3 and 8, While Jones and Kwarizadeh teach the method and interface for creating reports with information relating to the usage of specific incontinence products from a user selected institution and time period, they fail to show a field for selection currency type to generate the report as recited in the claims. In the same field of the invention, Cunningham et al. teaches a product usage reporting system similar to that of Jones and Kwarizadeh. In addition, Cunningham et al. further teaches a database storage means using different currency types (Table 1, lines 5 and

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6). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones, Kavarizadeh and Cunningham et al. before him at the time the invention was made, to modify the interface for creating reports relating to the usage of specific incontinence products according to a specified institution and time periods taught by Jones and Kavarizadeh to include the currency product data of Cunningham et al., in order to obtain an interface for tracking product usage for specific institutions over selected time periods using a specific currency type. One would have been motivated to make such a combination because an international reporting system for institutions would have been obtained, as taught by Cunningham.

As in Claims 9 and 15, Jones teaches the creation of a Ward Report (Fig. 1, ref. 46).

As in Claim 10, Jones and Kavarizadeh teach producing a summary report and detail report that may be opened from the summary report interface (Col. 10, line 48 et seq. of Jones) relating to the usage of specific incontinence products (See Claim 8 rejection *supra*). While Jones and Kavarizadeh teach generating such reports, they fail to teach generating a Summary report including information relating to major specific incontinence product groups as recited in Claim 10. Cunningham teaches a data storage and reporting system similar to that of Jones and Kavarizadeh. In addition Cunningham teaches major product groups in a Summary report (for example Col. 4 lines 65 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kavarizadeh and Cunningham before him at the time the invention was made, to modify the interface for creating summary and detailed reports

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relating to the usage of specific incontinence products according to a specified institution and time periods taught by Jones and Kavarizadeh to include and major product group summary report of Cunningham, in order to obtain an interface for presenting product usage by major product groups and detailed reports over selected time periods. One would have been motivated to make such a combination because a detailed reporting system for product usage would have been obtained, as taught by Cunningham.

As in Claim 11, Jones and Kavarizadeh teach major product groups comprised of specific incontinence products and Cunningham teaches product groups related to a major product group (Claim 8 and 9 rejections *supra*).

As in Claims 12, Jones and Kavarizadeh teach the detailed report including information relating to specific incontinence products and Cunningham teaches a major product group (Claims 8 and 9 rejection *supra*).

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones, US Patent 6516324, and Kavarizadeh, US Patent 6384728, and further in view of Amado, US Patent 5701400.

Jones and Kavarizadeh teach summary reports relating to the usage of specific incontinence products to be generated (See rejections *supra*). While Jones and Kavarizadeh teach reports relating to the usage of specific incontinence products associated with product usage, they fail to include a graph pertaining to such data including a cost versus budget graph as recited in the claims. In the same field of the

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invention, Amado teaches a reporting system similar to that of Jones and Kavarizadeh. In addition, Amado further teaches cost graphs pertaining to stored product usage/consumption and budget (Figure 55 and corresponding text). It would have been obvious to one of ordinary skill in the art, having the teachings of Jones and Kavarizadeh and Amado before him at the time the invention was made, to modify the product usage interface and reporting system relating to the usage of specific incontinence products taught by Jones and Kavarizadeh to include the cost and budget graphs for product usage of Amado, in order to obtain a graph representing the cost and budget figures for product usage relating to the usage of specific incontinence products pertaining to a specific institution and time period. One would have been motivated to make such a combination because a graphical representation of the analysis data results would have been obtained, as taught by Amado.

Claims 16, 18, 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al., US Patent 5974396, hereinafter Anderson, and further in view of Kavarizadeh, US Patent 6384728.

As in Claims 16 and 23, Anderson a product cost control method comprising storing data representative of product use ("The data is transaction data that describes the sales of a given product" Column 2, line 67 – Column 3, line 1), creating a GUI accessible by a user including access to a plurality of reports containing information based on the data ("various queries and requests of the consumer product purchase repository 26 are formatted and transmitted by a retailer via user interfaces 60 and 66",

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Column 8, lines 15-19), and providing an interface from one of the reports containing administrator analysis information pertaining to the data ("Repository Changes – Updates made by database information administrator to the database via the retailer interface", Column 14, lines 14-17), the analysis information to be related to product usage over a specific period of time (Column 10, line 29 – Column 11, line 19). While Anderson teaches such a system for displaying product usage data, they fail to show the data relating to incontinence products as recited in the claims. In the same field of the invention, Kawarizadeh teaches a product monitoring system similar to that of Anderson. In addition, Kawarizadeh further teaches the monitoring of incontinence products (Column 4, lines 4 et seq.) utilized to regulate incontinence care for patients in an institution (Column 4, line 5 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Anderson and Kawarizadeh before him at the time the invention was made, to modify the product usage reporting system taught by Anderson to include the incontinence products of Kawarizadeh, in order to obtain incontinence product usage reports. One would have been motivated to make such a combination because a way to remotely monitor usage of incontinence products for multiple patients would have been obtained, as taught by Kawarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

As in Claim 18, Anderson further teaches the analysis information to be related to product usage over a specific period of time (Column 10, line 29 – Column 11, line 19).

As in Claim 20, Anderson teaches such a system for displaying product usage data, they fail to show the administrator analysis information pertaining to the data is

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utilized to regulate incontinence care for patients in an institution as recited in the claims. In the same field of the invention, Kavarizadeh teaches a product monitoring similar to that of Anderson. In addition, Kavarizadeh further teaches the administrator analysis information pertaining to the data is utilized to regulate incontinence care (Col. 12, line 59 et seq.) for patients in an institution (Column 4, line 5 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Anderson and Kavarizadeh before him at the time the invention was made, to modify the product usage reporting system taught by Anderson to include the incontinence products data used to regulate incontinence care of Kavarizadeh, in order to obtain incontinence product usage reports used to regulate incontinence care. One would have been motivated to make such a combination because a way to calculate usage and need of hospital incontinence products would have been obtained, as taught by Kavarizadeh (Col. 1, lines 25-33 and Col. 3, lines 26-35).

As in Claim 21, Anderson teaches such a system for displaying product usage data and the administrator analysis information pertaining to the data is utilized to create a specific manufacturing cycle (Col. 11, line 20 et seq.), they fail to show utilization of incontinence products as recited in the claims. In the same field of the invention, Kavarizadeh teaches a product monitoring similar to that of Anderson. In addition, Kavarizadeh further teaches the administrator analysis information pertaining to the data is utilized to create a specific cycle of the incontinence products monitoring (Column 4, lines 4 et seq.). It would have been obvious to one of ordinary skill in the art, having the teachings of Anderson and Kavarizadeh before him at the time the

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invention was made, to modify the product usage reporting system and manufacturing cycle creation taught by Anderson to include the incontinence products of Kawarizadeh, in order to obtain an incontinence product usage cycle incontinence care. One would have been motivated to make such a combination because a way meet the needs of hospital's incontinence product usage would have been obtained, as taught by Kawarizadeh.

(10) Response to Argument

Jones teaches a data-displaying interface with a page including fields for selecting a desired institution (Figure 3, ref. 44) and a desired period (Figure 3, ref. 52, 54, 56) along with a button (Figure 3, Ref. 66) for displaying one report (Figure 3, Ref. 60) of a plurality of reports (Col. 10, lines 17-20) containing information that corresponds with the selected institution and time period (Col. 7, line 40 et seq.).

Kawarizadeh teaches a product monitoring system monitoring the usage of several specific incontinence products (Column 4, lines 4 et seq.).

Amado teaches a reporting system with cost graphs pertaining to stored product usage/consumption and budget (Figure 55 and corresponding text).

Cunningham et al. teaches a product usage reporting system with a database storage means using different currency types (Table 1, lines 5 and 6).

Anderson a product cost control method comprising storing data representative of product use ("The data is transaction data that describes the sales of a given product" Column 2, line 67 – Column 3, line 1), creating a GUI accessible by a user including

access to a plurality of reports containing information based on the data ("various queries and requests of the consumer product purchase repository 26 are formatted and transmitted by a retailer via user interfaces 60 and 66", Column 8, lines 15-19), and providing an interface from one of the reports containing administrator analysis information pertaining to the data ("Repository Changes – Updates made by database information administrator to the database via the retailer interface", Column 14, lines 14-17), the analysis information to be related to product usage over a specific period of time (Column 10, line 29 – Column 11, line 19).

In response to the arguments regarding the rejection of Claims 1-2, 4-5, 6, 13-14, and 22, under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Kwarizadeh, (Argument A, beginning on page 5 of the submitted appeal brief), the examiner disagrees. The primary argument in this section hinges on the following statement "There is no teaching or suggestion in Kwarizadeh that is directed to storing information relating to the usage of a plurality of specific incontinence products as set forth in the claim." (Page 8, lines 21-23). The examiner has proved, as seen above, that Kwarizadeh does teach storing such information as seen in Col. 12, lines 62-65, where it is explained that specific incontinence products belonging to particular patient wearing the garments are tracked by storing data indicating whether the garment has been used (wetted) or not corresponding to each particular patient in a database. Furthermore the CPU uses this database to send alerts to caregivers in a reporting fashion (Col. 2, line 62-Col. 13, line 8).

In response to applicant's argument that Jones and Kavarizadeh are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Jones and Kavarizadeh both acquire data and store such data involving medical applications and therefore are both in the field of the applicant's endeavor.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Jones teaches a data-displaying interface that is controlled by the user selecting fields a desired institution (Figure 3, ref. 44) and a desired time period (Figure 3, ref. 52, 54, 56) along with a button (Figure 3, Ref. 66) for displaying one of a plurality of reports (Figure 3, Ref. 60) corresponding to the user selected information for a particular medical product (Col. 7, line 40 et seq.). Kavarizadeh teaches a product monitoring system monitoring the usage of several specific incontinence products (Column 4, lines 4 et seq.). The interface of Jones may be used in several different medical applications as suggested

by Jones (Col. 4, lines 40-48). Jones further explains how the monitoring systems can be made more universal, and that it would be advantageous to use something other than a imaging implementation. Specifically Jones states: "the invention has application in user-operated electronic equipment having the ability to log data indicating how the equipment is being used.", (Col. 4, lines 44-48), log data as provided by the database of Kavarizadeh (Col. 12, line 64).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the arguments regarding the rejection of Claims 3, 8-12 and 15, under 35 U.S.C. 103(a) as being unpatentable over Jones, Kavarizadeh and further in view of Cunningham, (Argument B, beginning on page 15 of the submitted appeal brief), the examiner disagrees.

Applicant's arguments regarding Claims 3, 8-12, 15 are similar to Claims 1 and 13, and examiner's response to such arguments can be seen *supra*.

In response to the arguments regarding the rejection of Claims 6 and 7, under 35 U.S.C. 103(a) as being unpatentable over Jones, Kwarizadeh and further in view of Amado, (Argument C, beginning on page 18 of the submitted appeal brief), the examiner disagrees.

In response to the applicant's argument that Amado fails to teach the subject matter of Claims 6 and 7 in the recited rejection the examiner disagrees. Amado clearly teaches a graph pertaining to costs of products used (Fig. 55) and a graph regarding cost versus budget (Fig. 27, 28 and corresponding text).

Some of the Applicant's arguments in this section amount to a general allegation that the references lack motivation and involve non-analogous art without specifically pointing out how the references are not combinable.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the arguments regarding the rejection of Claims 16, 18, 20, 21, and 23, under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Kwarizadeh, (Argument D, beginning on page 22 of the submitted appeal brief), the examiner disagrees.

Claim 16's primary argument in this section hinges on the following statement "Kwarizadeh fails to teach or suggest storing data representative of use of a plurality of incontinence products." (Page 24, lines 1-2). The examiner has proved, as seen above, that Kwarizadeh does teach storing such information as seen in Col. 12, lines 62-65, where it is explained that specific incontinence products belonging to particular patient wearing the garments are tracked by storing data indicating whether the garment has been used (wetted) or not corresponding to each particular patient in a database. Furthermore the CPU uses this database to send alerts to caregivers in a reporting fashion (Col. 2, line 62-Col. 13, line 8).

In response to applicant's argument that there is no suggestion to combine the references Kwarizadeh and Anderson, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Jones teaches a data-displaying interface that is controlled by the user selecting fields a desired institution (Figure 3, ref. 44) and a desired time period (Figure 3, ref. 52, 54, 56)

along with a button (Figure 3, Ref. 66) for displaying one of a plurality of reports (Figure 3, Ref. 60) corresponding to the user selected information for a particular medical product (Col. 7, line 40 et seq.). Kawarizadeh teaches a product monitoring system monitoring the usage of several specific incontinence products (Column 4, lines 4 et seq.). The interface of Anderson may be used in several different retail applications as they suggest (Col. 6, lines 1-5). Anderson further explains how the monitoring systems can be made more universal, and that it would be advantageous to use the system to track any product data, i.e. insert log data as provided by the database of Kawarizadeh (Col. 12, line 64).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's arguments regarding Claims 18, 20, 23 are similar to those of Claims 1 and 16, and examiner's response to such arguments can be seen *supra*.

In response to applicant's argument that the prior art of record fails to teach the subject matter of Claim 21, the examiner disagrees. Anderson teaches creation of a manufacturing cycle based upon product usage (Col. 11, lines 20-30). Kawarizadeh

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teaches storing product usage data for incontinence products. Motivation for combining such inventions can be seen *supra* in the arguments regarding Claim 16.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sara M. Hanne



Conferees:

Weilun Lo



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